IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SEA-TAC AIR CARGO LIMITED PARTNERSHIP, a Washington limited partnership, acting by and through its general partner, TRANSIPLEX (SEATTLE), INC., a Washington corporation,	)	No. 62600-1-I
	)	DIVISION ONE
Appellants,	)	UNPUBLISHED
v.	)	FILED: June 7, 2010
PORT OF SEATTLE,	)	
Respondent.	)	

Cox, J. — This is a declaratory judgment action on multiple claims, seeking various forms of relief. The trial court granted summary judgment on the claims for breach of lease, breach of the duty of good faith and fair dealing respecting that lease, and tortious interference. There are no genuine issues of material fact with respect to these claims and the Port of Seattle is entitled to judgment as a matter of law. The court did not abuse its discretion in its rulings on the other matters before us. We affirm.

Following an extended period of negotiations, the Port and Sea-Tac Air Cargo Limited Partnership, a limited partnership whose general partner is

Transiplex (Seattle), Inc. ("Transiplex"), entered into a Seventh Amendment to Lease Agreement dated April 29, 2002. This agreement amended certain provisions of a long-term ground lease between the parties dated September 28, 1982. This ground lease is for property the Port owns at Seattle-Tacoma International Airport.

Transiplex constructed buildings on the premises described in the ground lease and sublets these buildings to Cargolux and other air-cargo companies. The parties previously amended the ground lease in ways that are not material to the current disputes.

The 2002 lease amendment provides for the deletion from the ground lease of certain realty (described in the amendment as "the Deleted Premises").[1] It also provides for an increase in the term of an option to extend the ground lease, a reduction in the amount of the monthly rent for the retained leasehold, a clarification of the terms for early termination of the lease, and a right of first refusal for Transiplex to lease additional space not within its retained leasehold.[2]

The primary focus of this litigation is the sixth numbered paragraph of the lease amendment. Transiplex contends that the language of paragraph six requires the Port to provide it with "two angled nose-load parking positions" on the Deleted Premises. Based on this assertion, Transiplex claims the Port breached the lease amendment by not providing this parking configuration.

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[1] Clerk's Papers at 244-45 (Declaration of Andrew Schneidler).

[2] Id.

Transiplex also claims that the Port breached the duty of good faith and fair dealing by its actions in connection with the lease amendment.

Transiplex next argues that the Port tortiously interfered with Transiplex's beneficial relationship with Cargolux, a subtenant. Transiplex makes a similar claim as to other subtenants.

On cross-motions for summary judgment, the trial court dismissed the breach of lease and breach of the duty of good faith and fair dealing claims. Later, the court also dismissed the tortious interference claim. The court denied motions for reconsideration of these rulings. Finally, the court denied Transiplex's discovery and continuance motions.

Transiplex appeals.

BREACH OF THE LEASE AMENDMENT

Transiplex argues that summary judgment on the breach of the lease amendment claim was improper. Specifically, it claims that the phrases "Transiplex Hardstand Expansion Project" and "additional common use cargo hardstand parking" as used in paragraph six of the lease amendment should be interpreted by the use of extrinsic evidence to mean that the Port agreed to provide two angled nose-load parking positions. In the alternative, Transiplex argues that conflicting extrinsic evidence creates a genuine issue of material fact for trial. We disagree.

A motion for summary judgment may be granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a

matter of law.[3] We review a summary judgment order de novo, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party.[4] "In the contract interpretation context, '[s]ummary judgment is not proper if the parties' written contract, viewed in light of the parties' other objective manifestations, has two "or more" reasonable but competing meanings.'"[5]

Washington follows the objective manifestation theory of contracts.[6] This court attempts "to determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties."[7] "Thus, when interpreting contracts, the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used."[8] This court "do[es] not interpret what was intended to be written but what was written."[9]

Extrinsic evidence "is admissible 'to show the situation of the parties and the circumstances under which a written instrument was executed, for the

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[3] CR 56(c).

[4] Khung Thi Lam v. Global Med. Sys., 127 Wn. App. 657, 661 n.4, 111 P.3d 1258 (2005).

[5] Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 83, 60 P.3d 1245 (2003) (quoting Hall v. Custom Craft Fixtures, Inc., 87 Wn. App. 1, 9, 937 P.2d 1143 (1997)).

[6] Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

[7] Id.

[8] Id. at 503-04.

[9] Id. at 504.

purpose of ascertaining the intention of the parties and properly construing the writing.'"[10] Our supreme court has explained that the "surrounding circumstances and other extrinsic evidence are to be used 'to determine the meaning of *specific words and terms used*' and not to 'show an intension independent of the instrument' or to 'vary, contradict or modify the written word.'"[11] "If relevant for determining mutual intent, extrinsic evidence may include (1) the subject matter and objective of the contract, (2) all the circumstances surrounding the making of the contract, (3) the subsequent acts and conduct of the parties, and (4) the reasonableness of respective interpretations urged by the parties."[12]

A question of interpretation of an integrated agreement is determined by the trier of fact if it depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence.[13] This court interprets contract terms as a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence or (2) if extrinsic evidence is used, only one reasonable interpretation can be drawn from it.[14]

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[10] Berg v. Hudesman, 115 Wn.2d 657, 669, 801 P.2d 222 (1990) (quoting J.W. Seavey Hop Corp. v. Pollock, 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944)).

[11] Hearst, 154 Wn.2d at 503 (quoting Hollis v. Garwall, Inc., 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999)).

[12] Id. at 502.

[13] Berg, 115 Wn.2d at 668 (quoting Restatement (Second) of Contracts § 212 (1981)).

[14] Tanner Elec. Co-op v. Puget Sound Power & Light Co., 128 Wn.2d 656,

We may affirm on any ground supported by the record even if the trial court did not consider that ground.[15]

Here, the dispute centers on the intent of the parties, as expressed in paragraph six of the lease amendment. Specifically, the dispute centers on the following emphasized phrases in that paragraph:

> The Port intends to pave the Deleted Premises for use ***as additional common use cargo hardstand parking***, in accordance with the Port's schedule for the ***Transiplex Hardstand Expansion Project***. Upon execution of this Amendment, the Deleted Premises shall return to the Port's possession and the Port shall assume responsibility for the management of aircraft movement within the Deleted Premises. The Port shall be responsible for providing cargo hardstand services as common use cargo hardstands to current and future tenants of Lessee in the same manner as the Port provides such services to other users of common use cargo hardstands at the Airport.[16]

Significantly, the above text contains no mention of two angled nose-load parking positions. In fact, the text contains no mention of either specific parking configurations or positions. Rather, under the express terms of the paragraph, the Port retains responsibility for providing cargo hardstand services to Transiplex's subtenants "in the same manner as the Port provides such services to other users of common use cargo hardstands at the Airport."

674, 911 P.2d 1301 (1996); Go2Net, 115 Wn. App. at 85.

[15] State v. Carter, 74 Wn. App. 320, 324 n.2, 875 P.2d 1 (1994).

[16] Clerk's Papers at 151 (emphasis added).

Likewise, it is undisputed that the two angled nose-load parking positions that Transiplex claims the amended lease requires are on the "Deleted Premises" as defined by that amendment. Transiplex does not dispute that it relinquished its leasehold interest in these premises upon execution of the amendment.

Because the disputed phrases are not defined in the lease amendment, and ordinary usage of the words in these phrases is inconclusive as to the parties' intent, we turn to extrinsic evidence to determine their mutual intent.[17]

We first consider the negotiations between counsel for the respective parties regarding the development of the language of paragraph six. That evidence includes several declarations from Ms. Isabel Safora, Deputy General Counsel for the Port[18] and a declaration from Mr. Jon Schneidler, counsel for Transiplex.[19]

One of Safora's declarations includes a letter to her from Schneidler, dated October 1, 2001, stating:

> ***I am writing to summarize my understanding of the mutual intent of the parties with respect to the proposed transfer to the Port of the aircraft parking apron portion of the lease premises.***
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> . . .

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[17] Hearst, 154 Wn.2d at 503 (quoting Hollis, 137 Wn.2d at 695-96).

[18] These declarations include Declaration of Isabel Safora, filed October 5, 2007, Clerk's Papers 255-95; Supplemental Declaration of Isabel Safora, filed February 28, 2008, Clerk's Papers 564-77; and another Supplemental Declaration of Isabel Safora, filed February 28, 2008, Clerk's Papers 3719-30.

[19] Clerk's Papers at 937-40.

> In exchange for Transiplex releasing this apron area back to the Port, the Port agrees to pave the entire area in concrete so that parking for additional aircraft would be available. The Port would take over the management of that area but would continue to serve the needs of the Transiplex tenants today and into the future while being free to otherwise use the space remaining to meet the needs of others.
>
> The lease provision covering this out of necessity must be general in terms. Something like the following would appear to be appropriate:
>
> > Effective upon approval of the Amendment, the Port shall assume responsibility for management of aircraft movement within the transferred premises. The Port shall insure that future management supports the continued cargo operations of present and future tenants of the Lessee with the exception of interruptions general to all air carriers at the airport (e.g., weather, etc.).
> >
> > . . .
>
> Also, we will need to have a provision which clarifies that the Port will attempt to phase the construction work so as to allow some limited continued cargo operations with additional cargo needs, if any[] accommodated as reasonably practical at some location nearby.[20]

Safora responded that Schneidler's proposed language regarding the Port's use of the aircraft parking area to be deleted from the ground lease was not acceptable. Legal prohibitions preclude the Port from granting special privileges or concessions to individual tenants for use of aircraft parking areas.[21] However, to address Transiplex's concern about use of the area, she drafted the language that was included as paragraph six in the final version of the lease amendment.[22] The last sentence of paragraph six requires the Port to provide

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[20] Id. at 1471-72 (emphasis added).

[21] Id. at 1468.

cargo hardstand services to Transiplex's tenants in the same manner as such services are provided to other users of such services. There is no dispute that this language completely addressed the first of Transiplex's concerns that Schneider expressed in his October 1, 2001, letter.

The other concern that Schneidler stated in his letter was regarding the scheduling of construction work on the hardstand. Transiplex wanted to ensure that the construction would not disrupt the continued cargo operations of its subtenants. Safora's declaration acknowledges Transiplex's request for assurance that "the Port would proceed expeditiously with construction once the Amendment was entered." In order to address this concern, and to preserve necessary control and flexibility for the Port, she drafted the language of paragraph six, which refers to the "schedule for the Transiplex Hardstand Expansion Project." Safora further testified that "the reason for the reference to 'Transiplex Hardstand Expansion Project' was simply to identify the relevant schedule for the specific project in question." [23]

Finally, Safora testified that the language "***intends*** to pave" in the first sentence of paragraph six was used rather than "***shall*** pave" to avoid binding the Port to the times that then existed in the schedule.[24] The use of these different words in the same paragraph supports that view.[25] This was intended

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[22] Id. at 564-73, 1467-69.

[23] Id. at 566.

[24] Id. at 567.

[25] See, e.g., State ex rel. Pub. Disclosure Comm'n v. Rains, 87 Wn.2d

to maintain flexibility in the event of changed circumstances.

In response to Safora's declarations, Schneidler stated in his declaration that:

> I am in basic agreement with [Safora's] statements regarding the negotiations leading up to the execution of the Seventh Amendment. Ms. Safora is correct when she recalls the concerns I raised regarding the language of the Seventh Amendment. I indeed wanted assurances that the Port would use the subject property for hardstand parking, with Transiplex's current and future tenants granted maximum rights to use the hardstand. This was particularly important for Transiplex given that one of its major tenants, Cargolux, was using the Transiplex apron to conduct nose load operations. I also wanted assurances that the Port would proceed expeditiously with the construction so as to cause minimum delay to Transiplex's tenants.[26]

This extrinsic evidence from counsel for the respective parties supports the trial court's conclusion that summary judgment was proper. First, the testimony of both skilled lawyers, each zealously representing his or her respective client, does not conflict as to the facts regarding development of the language in the amended lease. For example, both counsel were presumably aware of the legal significance of the statement in the first sentence of Schneidler's letter: their task was to memorialize "*the mutual intent of the parties with respect to the proposed transfer to the Port of the aircraft parking apron*

626, 634, 555 P.2d 1368 (1976) (Where "different words are used in the same statute, it is presumed that a different meaning was intended to attach to each word."); Service Employees Intern. Union, Local 6 v. Superintendent of Pub. Instruction, 104 Wn.2d 344, 349, 705 P.2d 776 (1985) ("'Where different language is used in the same connection in different parts of a statute, it is presumed that a different meaning was intended.'" (quoting State v. Roth, 78 Wn.2d 711, 715, 479 P.2d 55 (1971))).

[26] Clerk's Papers at 937-38.

portion of the lease premises." There are no facts in this record to suggest that they did anything less than memorialize the mutual intent of their respective clients respecting the Deleted Premises.

Second, nowhere in this testimony is there any mention of "two angled nose-load parking positions." There is no discussion of any particular configuration or number of parking positions that the Port was to provide on the Deleted Premises. If the mutual intent of the parties was to provide for specific configurations or numbers of parking positions, surely the evidence from counsel would reflect that. But it does not.

Third, there is nothing in this testimony from respective counsel to indicate that Transiplex attached any meaning to the phrase "Transiplex Hardstand Expansion Project" other than as a scheduling mechanism. The plain words of the first sentence of the paragraph state in relevant part "The Port intends to pave . . . in accordance with the Port's ***schedule*** for the Transiplex Hardstand Expansion Project."[27] There would have been no point in including the word schedule in that sentence if the parties mutually intended something more than satisfying Transiplex's concern that the construction work on the hardstand would allow its tenants to continue their cargo operations. Schneidler's testimony does not dispute this reading.

The phrase "additional common use hardstand parking," both in the context of the first sentence and the remainder of paragraph six, shows that both

[27] (Emphasis added.)

parties agreed that the Port then intended to build additional hardstand parking on the Deleted Premises for the common use of Cargolux and others. However, this language does not show that the amendment required the Port to provide two angled nose-load or any other specific parking positions or configurations. That the phrase "Transiplex Hardstand Expansion Project" is nothing more than a scheduling mechanism is consistent with our conclusion that the phrase "additional common use hardstand parking" does not require specific parking configurations or positions.

As our supreme court stated in Berg v. Hudesman,[28] extrinsic evidence is "'admitted, not for the purpose of importing into a writing an intention not expressed therein, but with the view of elucidating the meaning of the words employed.'"[29] If we were to accept Transiplex's arguments concerning the use of extrinsic evidence to interpret the phrases that are at issue, we would import into the written lease amendment intentions not expressed in the amendment: specific parking configurations and positions. Moreover, we would read out of the lease amendment the express provision that the Port will treat Transiplex's subtenants "in the same manner as the Port provides such services to other users of common use cargo hardstands at the Airport." In sum, we decline Transiplex's invitation to accept its interpretations of the extrinsic evidence.

Inquiry into the extrinsic evidence of the negotiations between counsel

[28] 115 Wn.2d 657, 801 P.2d 222 (1990).

[29] Id. at 669 (quoting J.W. Seavey Hop Corp., 20 Wn.2d at 348-49).

who drafted the language in paragraph six does not end our inquiry. Transiplex also relies on the Certification of Contracting Authority of Gina Marie Lindsey that is attached to the lease amendment. The apparent purpose of drawing our attention to this certification is to use the public meeting minutes from the Port Commission's December 11 meeting as extrinsic evidence to support Transiplex's arguments.

The certification states that the Port Commissioners, at their December 11, 2001 meeting, ratified Lindsey's power "to negotiate and sign [on their behalf]" the lease amendment now before us. Lindsey is the Director of the Aviation Division of the Port.

The meeting minutes largely adopt the language of a staff memorandum dated November 5, 2001, that the minutes identify. Transiplex points to a sentence in the minutes that states "Latest designs indicate that the new ramp will be large enough to accommodate two simultaneous 747-400 nose-load operations."[30] According to Transiplex, "This sentence alone makes the Port Commission's intentions and understanding relevant to the interpretation [of paragraph six]."

We note that, two paragraphs below the above quoted sentence, the same meeting minutes state:

> The Aeronautical Line of Business has developed technical design materials for building the aircraft parking positions and will be requesting authorization from the Commission to construct the aircraft parking positions during 2002.[31]

[30] Id. at 238, 244.

[31] Clerk's Papers at 244.

Reading together the quotation regarding "two simultaneous 747-400 nose-load operations" and the quotation that follows regarding development of technical design materials for airport parking positions, we conclude that the planning for construction of aircraft parking positions on the Deleted Premises was a work in progress at the time of the December 11 meeting. This reading is consistent with Safora's declaration describing scheduling of such construction in a similar way during her October 2001 negotiations with Schneidler. There is no dispute that planning for such construction included "two simultaneous 747-400 nose-load operations" as of the time of the December 11 public meeting. But whether such planning existed is not the question before us.

Rather, the question that we must address is the meaning of the disputed phrases in paragraph six of the lease amendment.[32] Transiplex argues that one sentence in the meeting minutes makes the intentions and understanding of the Port Commissioners at that meeting relevant to the interpretation of paragraph six. As discussed above, the most reasonable reading of these minutes is that the Commissioners were made aware that planning for aircraft parking, as of the date of the meeting, included the potential for two nose-load positions. The Port does not contest this.

In any event, what the Commissioners understood from this one sentence is of no help for purposes of correctly applying the extrinsic evidence rule.

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[32] Go2Net, 115 Wn. App. at 85; Elliott Bay Seafoods, Inc. v. Port of Seattle, 124 Wn. App. 5, 12, 98 P.3d 491 (2004).

Regardless of the individual or collective subjective understandings of the Port Commissioners at this public meeting, there is nothing to show that their understanding helps to interpret the language of the amended lease. Accordingly, their understandings are irrelevant.[33]

Moreover, the use of the heading "Transiplex Hardstand Project" in the minutes of December 11 does nothing to change our view of the meaning of paragraph six, as explained earlier in this opinion. That heading appears within a general discussion of a request for authorization for planning and expenditure of over $5,300,000 for the 2002 Aircraft Hardstand Projects. As we have already explained, the most reasonable reading of paragraph six is that the reference to the Transiplex Hardstand Project was as a scheduling device, nothing more.

Transiplex also argues that the court erred in considering the final "as-bid" construction plans for the project in interpreting the meaning of "Transiplex Hardstand Expansion Project" because those plans were allegedly not communicated to Transiplex prior to the April 2002 execution of the lease amendment. Transiplex cites Restatement (Second) of Contracts § 201, as adopted by Berg, in support of its argument that the court should not consider the final as-bid design plans.[34]

> (2) Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made

[33] Hearst, 154 Wn.2d at 509 (concluding that extrinsic evidence about the parties' desire to ensure that Seattle maintained two newspapers of general circulation was irrelevant to defining disputed terms in the agreement between the parties).

> (a) ***that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party***; or
> (b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.[35]

Transiplex's argument is not persuasive. Transiplex presented no evidence that the Port knew that Transiplex attached a different meaning to paragraph six than the Port. Transiplex presented a great deal of extrinsic evidence to support its argument that the mutual intent of the parties prior to December 2001 was that the Port would build two nose-load parking positions on the Deleted Premises. But there is no evidence that the Port knew prior to the April 2002 execution of the lease amendment that Transiplex understood paragraph six to mean that the Port was obligated to complete the project according to the plans that existed as of December 2001.

As we already discussed, the undisputed evidence from Schneidler and Safora regarding paragraph six to the lease amendment is that the paragraph was added to address two primary concerns.[36] First, Transiplex wanted assurance that the Port would use the Deleted Premises for hardstand parking.[37]

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[34] Restatement (Second) Contracts § 201(2) (1981); see also Berg, 115 Wn.2d at 669 ("Additionally, it is possible that the parties have attached different meanings to certain terms used, and, if so, the rules set out in Restatement (Second) of Contracts § 201 provide guidance.").

[35] Restatement (Second) Contracts § 201(2) (1981) (emphasis added).

[36] Clerk's Papers at 151 ("The Port intends to pave the Deleted Premises for use as additional common use cargo hardstand parking, in accordance with the Port's schedule for the Transiplex Hardstand Expansion Project.").

Second, Transiplex wanted assurance that the Port would complete the construction within a specific timeframe, with minimum disruption to the operations of its tenants.[38] Thus, the only reasonable interpretation of "Transiplex Hardstand Expansion Project" is the final design of the project, not some earlier phase of design. As the trial court stated, "Why would they sign Amendment Number 7 if they thought that amendment Number 7 bound them to something that wasn't in [the] current plan without saying it?"[39]

Likewise, the phrase "additional common use cargo hardstand parking" cannot reasonably be interpreted to mean "two nose-load 747 parking positions." The seventh amendment's clear language that "the Deleted Premises shall return to the Port's possession and the Port shall assume responsibility for the management of aircraft movement,"[40] leaves no room for a different interpretation. Thus, there is simply no basis to conclude that the Port knew that Transiplex attached a different meaning to this paragraph.

Whether Transiplex saw the final design drawings showing the changes in aircraft parking is a disputed fact. But, given the above analysis, it is not

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[37] Id. at 566.

[38] Id.

[39] Report of Proceedings (June 6, 2008) at 30.

[40] Clerk's Papers at 151; see also Clerk's Papers at 228 (rejecting Transiplex's proposal that the Port provide an "envelope" of time within which Transiplex's tenants would have priority use of the hardstand); Clerk's Papers at 259 (rejecting Transiplex's proposal that the Port agree to "insure that future management supports the continued cargo operations of present and future tenants of [Transiplex]").

material to our interpretation of paragraph six.

Transiplex also argues that Port staff were prohibited from changing the project design in a way that would conflict with the Port Commission's understanding of the project when they approved it. As we have discussed, what, if any, understanding the Commissioners had at the December 11 meeting does not change our view of the proper reading of paragraph six. Changes by staff after that meeting are irrelevant to the summary judgment question before us.

Transiplex also relies on a March 2001 letter from Lindsey to Transiplex's Chairman, Denis Heffering, as relevant extrinsic evidence. Its reliance on the letter to explain the challenged phrases in the amended lease is misplaced.

The letter provides a snapshot of the status of negotiations between the parties as of March 2001. Among other things, the letter includes five bulleted paragraphs regarding the then understandings of the parties. We note that one of those bulleted paragraphs states that counsel for the respective parties would develop language for the lease amendment. We have already discussed the evidence of the development of language by Safora and Schneidler.

Enclosed with the letter are five drawings. One shows the then existing parking configuration on the hardstand. The other drawings show other possible parking configurations. One of these four drawings shows angled parking for two nose-load 747 cargo planes.

Nothing in the letter or its enclosures alters our view that the Port had no

duty under paragraph six to provide Transiplex with specific parking configurations or positions on the Deleted Premises. The most to be gleaned from the letter is that it represented the parties' views in March 2001. The letter does nothing to show that the trial court erred by granting summary judgment to the Port.

Because there were no genuine issues of material fact and the Port was entitled to judgment as a matter of law, summary judgment in favor of the Port on this claim was proper. Moreover, the court did not abuse its discretion when it denied motions for reconsideration of this decision.

DUTY OF GOOD FAITH

Transiplex argues that the Port breached the contractual duty of good faith and fair dealing for a number of reasons. We disagree.

Every contract includes "an implied duty of good faith and fair dealing," which "obligates the parties to cooperate with each other so that each may obtain the full benefit of performance."[41] However, the duty to cooperate exists only in relation to performance of specific contract terms and "does not extend to obligate a party to accept a material change in the terms of [the] contract," or to "inject substantive terms into the parties' contract."[42] The duty of good faith requires "only that the parties perform in good faith the obligations imposed by their agreement."[43]

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[41] Badgett v. Sec. State Bank, 116 Wn.2d 563, 569-70, 807 P.2d 356 (1991).

[42] Id.

Transiplex's arguments relating to breach of the duty of good faith fall into two categories. First, Transiplex asserts that the Port breached the duty by failing to build the project to accommodate nose-load parking. Second, Transiplex asserts that the Port breached the duty by failing to exercise its discretionary power to accommodate Transiplex's request for nose-load parking.

With respect to the first group of arguments, Badgett v. Security State Bank controls.[44] There is no "free-floating duty of good faith unattached to the underlying legal document."[45] Because, as discussed above, no contractual term required the Port to provide nose-load parking positions, the Port did not breach its duty of good faith and fair dealing by eliminating those parking positions in the final design plans or by building the project in accordance with those plans.

Transiplex also argues that the Port breached its duty by failing to cooperate with Transiplex in an effort to create nose-load parking on the new hardstand after the project was completed. Given that the language of paragraph six only requires the Port to provide "cargo hardstand services as common use cargo hardstands to current and future tenants of Lessee in ***the same manner as the Port provides such services to other users of common use cargo hardstands***,"[46] there is no contractual term requiring the

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[43] Id.

[44] 116 Wn.2d 563, 569-70, 807 P.2d 356 (1991).

[45] Id. at 570; Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 177, 94 P.3d 945 (2004).

Port to cooperate with Transiplex to create nose-load parking.

With respect to the second argument, Transiplex argues that the Port breached its duty of good faith by failing to reasonably exercise its discretionary powers to "honor the intentions of the parties and the purposes of the Seventh Amendment." Transiplex cites this court's opinion in Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.[47] for the proposition that "[t]he covenant of good faith applies when the contract gives one party discretionary authority to determine a contract term."[48] Transiplex suggests that this requires the Port to use its discretion to accommodate Transiplex's wish for nose-load parking. Goodyear does not support this argument.

In Goodyear, we held that,

> [t]he duty of good faith and fair dealing applies when one party has discretionary authority to determine certain terms of the contract, such as quantity, price, and time. . . . The covenant may be relied upon only when the manner of performance under a specific contract term ***allows for discretion on the part of either party***. . . . However, it will not contradict terms or conditions for which a party has bargained.[49]

Here, any discretion under the lease amendment is with respect to providing cargo hardstand services on an equal basis to all users. There is no

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[46] Clerk's Papers at 151 (emphasis added).

[47] 86 Wn. App. 732, 935 P.2d 628 (1997), review denied, 133 Wn.2d 1033 (1998).

[48] Id. at 738.

[49] Id. at 739 (quoting Amoco Oil Co. v. Ervin, 908 P.2d 493, 498 (Colo. 1995)).

evidence that the Port failed to provide hardstand services to Transiplex's tenants in accordance with this duty.

The amended lease provides that the Port would construct the project in accordance with the schedule for the Transiplex Hardstand Expansion Project. It further provides that the Port would be responsible for the management of aircraft movement within the Deleted Premises. The Port's duty of good faith and fair dealing does not require it to act beyond the scope of these duties.

TORTIOUS INTERFERENCE

Transiplex argues that the trial court erred in summarily dismissing its claim of tortious interference with a contractual relationship. We disagree.

A plaintiff must establish all of the following elements to prove a claim of tortious interference with a contractual relationship:

> (1) the existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage.[50]

> A claim for tortious interference is established 'when interference resulting in injury to another is wrongful by some measure beyond the fact of the interference itself. Defendant's liability may arise from improper motives or from the use of improper means.' . . . Interference can be 'wrongful' by reason of a statute or other regulation, or a recognized rule of common law, or an established standard of trade or profession.[51]

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[50] Leingang v. Pierce County Med. Bureau, Inc., 131 Wn.2d 133, 157, 930 P.2d 288 (1997); see also Boyce v. West, 71 Wn. App. 657, 665, 862 P.2d 592 (1993) ("a complete failure of proof concerning an element necessarily renders all other facts immaterial").

[51] Pleas v. City of Seattle, 112 Wn.2d 794, 804, 774 P.2d 1158 (1989) (quoting Top Serv. Body Shop, Inc. v. Allstate Ins. Co., 283 Or. 201, 209-210,

For summary judgment purposes, "A defendant who can point out to the trial court that the plaintiff lacks competent evidence to support an essential element of the plaintiff's case is entitled to summary judgment because a complete failure of proof concerning an element necessarily renders all other facts immaterial."[52]

A genuine issue of material fact exists where reasonable minds might differ.[53]

Here, elements (1) and (2) of the claim are uncontested. There was an existing lease between Transiplex and its tenant, Cargolux. The Port knew of that relationship.

Whether there are genuine issues of material fact for elements (3) and (4) of the tortious interference claim is at issue. Assuming, for purposes of argument only, the existence of intentional interference under the third element, Transiplex must show that reasonable minds could differ on whether the Port's actions were wrongful either because the Port's actions were based on improper motives or because the Port's use of improper means in fact caused injury to Transiplex's relationship with Cargolux.[54] We conclude that there is no showing

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582 P.2d 1365 (1978)).

[52] Boyce, 71 Wn. App. at 665.

[53] Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

[54] Pleas, 112 Wn.2d at 803.

of either.

Transiplex first argues that there is an inference that the Port interfered with the lease relationship between Transiplex and Cargolux "in order to evade [the Port's] obligations to provide nose-load parking under the Seventh Amendment."[55] Transiplex lists the following as intentional interference: the Port assigning Cargolux to "other parking," showing Cargolux other space it might lease instead of renewing its lease with Transiplex, probing Cargolux for details about its dispute with Transiplex over charges to Cargolux, and reviewing the Cargolux complaint against Transiplex before service of that complaint on Transiplex.[56] Transiplex also states the Port's conduct in positioning the test location for nose-load parking, over Transiplex's objections, was additional interference with the Cargolux lease with Transiplex.[57]

As Pleas v. City of Seattle[58] makes clear, a plaintiff must show not only interference with a business relationship but also "that the defendant had a 'duty of non-interference; *i.e.*, that he interfered for an improper purpose . . . or . . . used improper means . . .'"[59] Assuming for purposes of argument only, that the above complaints constitute intentional interference by the Port with the Cargolux lease, they do not give rise to the inference of improper motive that

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[55] Brief of Appellant at 40.

[56] Id.

[57] Id.

[58] 112 Wn.2d 794, 804, 774 P.2d 1158 (1989).

[59] Id. at 804.

Transiplex asserts: to evade obligations to provide nose-load parking under the amended lease. As we have explained earlier in this opinion, there is no such obligation under that document. The Port has consistently taken the position that there is no such obligation. Thus, reasonable minds could not differ—this alleged improper motive does not exist.

Transiplex argues further that the "Port's actions had the intended effect."[60] It claims that Cargolux lost its early enthusiasm for nose-load parking on the Deleted Premises and later decided not to renew its lease.

Deposition testimony of officers of Cargolux indicates that the decision not to renew the lease with Transiplex had nothing to do with the Port. Nevertheless, this factual dispute as to causation is not material here. Transiplex's failure to show that the Port's alleged interference was wrongful is a failure to show a genuine issue of material fact to preclude summary judgment.

Transiplex next argues that the Port had an obligation under the amended lease to allow loading and unloading of aircraft, and that it forced Cargolux to park elsewhere. Again, we have addressed earlier in this opinion the obligations of the Port under the amended lease. The Port expressly maintained the obligation to provide "cargo hardstand services as common use cargo hardstands to [Cargolux] in the same manner as the Port provides such services to" others. There has been no breach of this obligation and no showing of any improper motive behind the Port's performance of this obligation.

[60] Brief of Appellant at 40.

In its Reply Brief, Transiplex expands on its argument that the Port had an improper motive behind the actions that Transiplex identifies. Specifically, it claims that the Port tried "to lure Cargolux away from Transiplex, apparently reasoning that with Cargolux gone, the Port could argue that Transiplex was not damaged by the Port's breach of contract."[61] Because the Port did not breach its obligations under the amended lease, whether Transiplex suffered damages is immaterial. Moreover, this expanded argument fails to show that the Port's actions were wrongful.

In sum, Transiplex fails to show there is any genuine issue of material fact regarding the Port's allegedly improper motives. Nowhere does Transiplex argue that the Port used improper means to accomplish any end. In the absence of a showing that reasonable minds could differ on either of these two factors, none of the other factors of elements (3) and (4) of the tortious interference claim are material for summary judgment purposes.

The trial court properly dismissed the tortious interference claim on summary judgment.

Although Transiplex's tortious interference claim is not limited to its lease with Cargolux, this is the only relationship for which Transiplex has put forth facts sufficient to argue all of the elements of tortious interference.[62] Transiplex

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[61] Reply Brief of Appellants at 18.

[62] See Brief of Respondent at 41 n.16; see also Report of Proceeding (Nov. 25, 2008) at 56-58 ("There is no evidence that would meet all the requirements of tortious interference with respect to any of the other Transiplex tenants.").

does not point to any facts establishing a breach or termination of any other relationship. For this reason, we do not address Transiplex's argument with respect to its other subtenants.

DISCOVERY AND CONTINUANCE MOTIONS

Transiplex argues that the trial court abused its discretion in denying Transiplex's third motion to compel discovery, partially granting the Port's motion for a protective order, denying a second continuance of the second summary judgment hearing, and denying reconsideration of the summary judgment order in light of the Port's late production of discovery. We disagree.

This court reviews a trial court's decision on a motion for continuance, as well as decisions on underlying discovery issues, for abuse of discretion.[63] A motion for a continuance is properly denied if the moving party does not outline the evidence that is sought and demonstrate how the new evidence would support the party's position.[64]

Following the trial court's first summary judgment order, Transiplex served the Port with a fourth set of interrogatories and requests for production and a CR 30(b)(6) notice of deposition, seeking information about the Port's communications and contacts with Transiplex's tenants. The Port responded in a limited manner, and filed a motion for a protective order. Transiplex filed a motion to compel discovery. And the Port filed a motion for summary judgment

[63] Briggs v. Nova Services, 135 Wn. App. 955, 619-22, 147 P.3d 616 (2006), aff'd, 166 Wn.2d 794, 213 P.3d 910 (2009).

[64] CR 56(f); Briggs, 135 Wn. App. at 619-22.

seeking dismissal of all remaining claims.

The court denied Transiplex's motion to compel discovery except for the exchange of privilege logs and limited depositions. The court also continued the summary judgment hearing for a month to allow this limited additional discovery. At the summary judgment hearing, the court denied Transiplex's request for an additional continuance and granted summary judgment for the Port in an oral ruling.

After the summary judgment hearing, the Port produced additional discovery and Transiplex filed a motion for reconsideration in light of this additional information. The court denied the motion.

Transiplex argues that the trial court abused its discretion in denying a second continuance of the summary judgment hearing because Transiplex was "handcuffed in our ability to gain the information" and still needed additional discovery to defend against the Port's summary judgment motion. This does not satisfy the requirement that Transiplex demonstrate how the additional discovery would support its position. The trial court did not abuse its discretion in denying Transiplex's motion for a continuance. For the same reasons, the court's underlying order denying in part Transiplex's requests for additional discovery and granting in part the Port's motion for a protective order were not an abuse of discretion.

Finally, Transiplex argues that the additional discovery produced by the Port after the trial court's oral ruling on summary judgment justified reversal. All

of the late-produced discovery related to communications between Tom Green and Cargolux. Because the late-produced documents did not substantively change the information before the court on summary judgment, the court did not abuse its discretion in denying Transiplex's motion for reconsideration.

We affirm.

Cox, J.

WE CONCUR:

Baker, J.

Becker, J.